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2 of the State of California
3 WILBERT E. BENNETT
4 Supervising Deputy Attorney General
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6 Deputy Attorney General
7 California Department of Justice
8 1515 Clay Street, 20th Floor
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13 Attorneys for Complainant

14
15 **BEFORE THE**
16 **CALIFORNIA BOARD OF ACCOUNTANCY**
17 **DEPARTMENT OF CONSUMER AFFAIRS**
18 **STATE OF CALIFORNIA**

19 In the Matter of the Accusation Against:

20 JOEL DAVID MOMSEN
21 C/O PISENTI & BRINKER LLP
22 433 Soscol #B151
23 Napa, CA 94559

24 Certified Public Accountant Certificate No.
25 19988

26 Respondent.

Case No. AC-2007-2

OAH No.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

27 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
28 above-entitled proceedings that the following matters are true:

PARTIES

1. Carol Sigmann (Complainant) is the Executive Officer of the California
Board of Accountancy. She brought this action solely in her official capacity and is represented
in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Diann
Sokoloff, Deputy Attorney General.

2. Respondent Joel David Momsen (Respondent) is represented in this
proceeding by attorney Doron Weinberg, whose address is 528 Octavia Street, San Francisco,
CA 94102.

3. On or about March 15, 1974, the California Board of Accountancy issued Certified Public Accountant Certificate No. 19988 to Joel David Momsen, C/O Pisenti & Brinker LLP (Respondent). The Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2007-2 and will expire on January 31, 2008, unless renewed.

JURISDICTION

4. Accusation No. AC-2007-2 was filed before the California Board of Accountancy (Board), Department of Consumer Affairs, and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on September 29, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. AC-2007-2 is attached as exhibit A and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, discussed with counsel, and fully understands the charges and allegations in Accusation No. AC-2007-2. Respondent has also carefully read, discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. AC-2007-2.

9. Respondent agrees that his Certified Public Accountant Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

10. Respondent Joel David Momsen has never been the subject of any disciplinary action. He is admitting responsibility at an early stage in the proceedings.

CONTINGENCY

11. This stipulation shall be subject to approval by the California Board of Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

OTHER MATTERS

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

DISCIPLINARY ORDER

In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

1 IT IS HEREBY ORDERED that Certified Public Accountant Certificate No.
2 19988 issued to Respondent Joel David Momsen is revoked. However, the revocation is stayed
3 and Respondent is placed on probation for three (3) years on the following terms and conditions.

4 1. **Actual Suspension.** Certified Public Accountant Certificate No. 19988,
5 issued to Joel David Momsen, is suspended for one year. During the period of suspension,
6 Respondent shall engage in no activities for which certification as a Certified Public Accountant
7 or Public Accountant is required as described in Business and Professions Code, Division 3,
8 Chapter 1, Section 5051.

9 2. **Obey All Laws.** Respondent shall obey all federal, California, other
10 states' and local laws, including those rules relating to the practice of public accountancy in
11 California.

12 3. **Submit Written Reports.** Respondent shall submit, within ten (10) days
13 of completion of the quarter, written reports to the Board on a form obtained from the Board.
14 Respondent shall submit, under penalty of perjury, such other written reports, declarations, and
15 verification of actions as are required. These declarations shall contain statements relative to
16 Respondent's compliance with all the terms and conditions of probation. Respondent shall
17 immediately execute all release of information forms as may be required by the Board or its
18 representatives.

19 4. **Personal Appearances.** Respondent shall, during the period of probation,
20 appear in person at interviews/meetings as directed by the Board or its designated
21 representatives, provided such notification is accomplished in a timely manner.

22 5. **Comply With Probation.** Respondent shall fully comply with the terms
23 and conditions of the probation imposed by the Board and shall cooperate fully with
24 representatives of the Board of Accountancy in its monitoring and investigation of the
25 Respondent's compliance with probation terms and conditions.

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6. **Practice Investigation.** Respondent shall be subject to, and shall permit, practice investigation of Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

7. **Comply With Citations.** Respondent shall comply with all final orders resulting from citations issued by the Board of Accountancy.

8. **Tolling of Probation For Out-of-State Residence/Practice.** In the event Respondent should leave California to reside or practice outside this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports or reimburse the Board costs, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

9. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

10. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

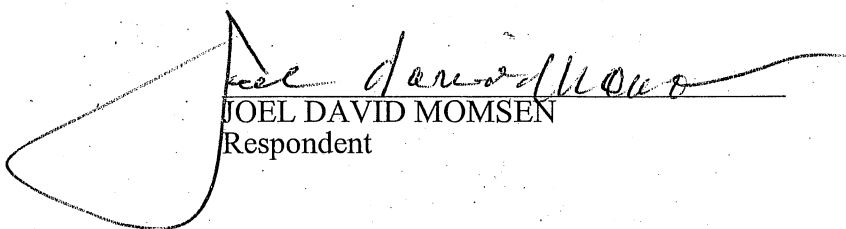
11. **Cost Reimbursement.** Respondent shall reimburse the Board \$4,200 for its investigation and prosecution costs. The payment shall be made within the first two years of probation. The payment shall be made as follows: in quarterly payments (due with quarterly written reports), the final payment being due one year before probation is scheduled to terminate.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Doron Weinberg. I understand the stipulation and the

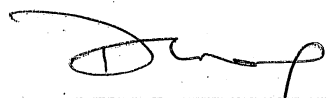
1 effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated
2 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
3 bound by the Decision and Order of the California Board of Accountancy.

4 DATED: 2/16/07.

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6 
7 JOEL DAVID MOMSEN
8 Respondent

9 I have read and fully discussed with Respondent Joel David Momsen the terms
10 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
11 Order. I approve its form and content.

12 DATED: 2-15-07.

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14 
15 DORON WEINBERG
16 Attorney for Respondent

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the California Board of Accountancy of the Department of
20 Consumer Affairs.

21 DATED: 2/26/07

22 EDMUND G. BROWN JR., Attorney General
23 of the State of California

24 WILBERT E. BENNETT
25 Supervising Deputy Attorney General

26 
27 DIANN SOKOLOFF
28 Deputy Attorney General
Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JOEL DAVID MOMSEN
C/O PISENTI & BRINKER LLP
433 Soscol #B151
Napa, CA 94559

Certified Public Accountant Certificate No.
19988

Respondent.

Case No. AC-2007-2

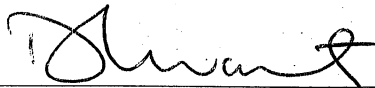
OAH No.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 29, 2007.

It is so ORDERED March 30, 2007.



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A

Accusation No. AC-2007-2

1 BILL LOCKYER, Attorney General
of the State of California
2 DIANN SOKOLOFF, State Bar No. 161082
Deputy Attorney General
3 California Department of Justice
1515 Clay Street, 20th Floor
4 P.O. Box 70550
Oakland, CA 94612-0550
5 Telephone: (510) 622-2212
Facsimile: (510) 622-2270
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7 Attorneys for Complainant

8
9 **BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

10
11 In the Matter of the Accusation Against:

Case No. AC-2007-2

12 JOEL DAVID MOMSEN
C/O PISENTI & BRINKER LLP
13 433 Soscol #B151
Napa, CA 94559

ACCUSATION

14 Certified Public Accountant Certificate No.
15 19988

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California Board of Accountancy, Department of
22 Consumer Affairs.

23 2. On or about March 15, 1974, the California Board of Accountancy issued
24 Certified Public Accountant Certificate Number 19988 to Joel David Momsen (Respondent).
25 The Certified Public Accountant license was in full force and effect at all times relevant to the
26 charges brought herein and will expire on January 31, 2008, unless renewed.

27 JURISDICTION

28 3. This Accusation is brought before the California Board of Accountancy

(Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5100 states:

"After notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

"(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

5. Section 5106 states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The record of the conviction shall be conclusive evidence thereof. The board may order the certificate or permit suspended or revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made, suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information or indictment."

6. Section 5107(a) of the Code states:

"The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

7. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been

convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

8. Title 16, California Code of Regulations, section 99 (Board Rule 99), provides that a crime or act is substantially related to the qualifications, functions, or duties of a certified public accountant (CPA) if, to a substantial degree, it evidences present or potential unfitness to perform the functions authorized by the licensee's certificate or permit in a manner consistent with the public health, safety, or welfare. Rule 99 provides that crimes involving fiscal dishonesty are included in those which are, by definition, substantially related to the qualifications, functions or duties of a CPA.

CAUSE FOR DISCIPLINE

(Conviction of a Felony)

9. Respondent is subject to disciplinary action under section 5100(a) in that on or about January 10, 2005, he was convicted, pursuant to a guilty plea, in the United States District Court, Northern District of California, in *United States of America v. Joel Momsen*, Case No. CR 04-0166 MHP (N.D. Cal. May 6, 2005), of one felony violation of 26 U.S.C. section 7206(1) (Submitting a False Collection Information Statement). At all times relevant to the conviction, respondent held an active California CPA license. The circumstances are as follows:

10. Criminal Charges. In *United States of America v. Joel Momsen*, Respondent was originally charged with one count of tax evasion in violation of 26 U.S.C. section 7201, statement to the Internal Revenue Service (IRS), and one count of submitting false collection information in violation of 26 U.S.C. section 7206(1). During the years 1991 through 1993, Respondent operated his own accounting firm and incurred unpaid payroll tax liabilities.

1 In October 1995, to avoid the sale by the IRS of his residence at 2507 Rollingwood Drive, Napa,
2 California in order to satisfy his unpaid tax liabilities, he sold his residence to an unrelated third
3 party. Respondent and the third party entered into an agreement whereby the third party
4 purchased the property from him for \$210,000. She agreed to lease the property back to
5 Respondent for \$1,600 per month and they agreed that at a later time, he would repurchase the
6 property for \$215,000. The IRS received approximately \$78,000 from the sale of the property
7 which was not sufficient to pay in full the taxes owed by him. Respondent repurchased the
8 property in December 1997 for \$215,000 and put title in his mother's name. In February 2001,
9 Respondent submitted a false Form 433-A to the Collection Division of the IRS under the
10 penalty of perjury in order to compromise his unpaid tax liabilities. Respondent knowingly
11 failed to include his residence located at 2507 Rollingwood Drive in Napa, California as an asset.

12 11. Plea Agreement. Respondent pled guilty to Count 2 of the Indictment,
13 charging him with submitting a false collection information statement, in violation of 26 U.S.C.
14 section 7206(1). Respondent's conviction stems from his conduct related to his submission of a
15 false Form 433-A to the Collection Division of the IRS, as explained more fully in paragraph 10,
16 above.

17 12. Details of Plea Agreement. As set forth in the Plea Agreement,
18 Respondent admitted to the information contained in paragraph 10, above.

19 13. Sentence. Respondent was sentenced to probation for two years wherein
20 he was ordered to pay criminal monetary penalties of \$100 for court assessment and
21 \$203, 401.68 for restitution to the IRS, and placed on home confinement with electronic
22 monitoring for two months.

23 14. Incorporating by reference the allegations in paragraphs 9 through 13,
24 above, Respondent's CPA certificate is subject to discipline under Code section 5100(a) in that
25 the felony conviction constitutes conviction of a crime substantially related to the qualifications,
26 functions and duties of a CPA within the meaning of Board Rule 99. Respondent admitted that
27 he submitted a false Form 433-A Collection Information Statement to the Collection Division of
28 the IRS by not including his residence as an asset, thereby indicating that the underlying criminal

1 offense involved fiscal dishonesty.

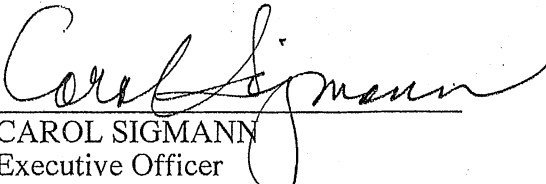
2 15. Pursuant to Code section 5107, it is requested that the administrative law
3 judge, as part of the proposed decision in this proceeding, direct Respondent to pay to the Board
4 all reasonable costs of investigation and prosecution in this case, including, but not limited to,
5 attorney's fees.

6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

- 9 1. Revoking, suspending or otherwise imposing discipline upon Certified
10 Public Accountant Certificate Number 19988, issued to Joel David Momsen;
11 2. Ordering Joel David Momsen to pay the California Board of Accountancy
12 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
13 Professions Code section 5107;
14 3. Taking such other and further action as deemed necessary and proper.

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17 DATED: September 5, 2006

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19 
20 CAROL SIGMANN
21 Executive Officer
22 California Board of Accountancy
23 Department of Consumer Affairs
24 State of California
25 Complainant

26 03541110-SF2006402166

27 Momsen Acc.wpd

28 ds 8/29/06